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SENATE DRS35062-ML-50A (01/28)

Short Title: Automatic Expunction/Mistaken Identity. (Public)

Sponsors: Senators McKissick, Bingham, and Daniel (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR THE AUTOMATIC EXPUNCTION OF CERTAIN RECORDS
3 OF A PERSON WHEN THE CHARGE OR CHARGES AGAINST THE PERSON ARE
4 DISMISSED AS A RESULT OF IDENTITY THEFT OR MISTAKEN IDENTITY.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 15A-147 reads as rewritten:

7 "§ 15A-147. Expunction of records when charges are dismissed or there are findings of
8 not guilty as a result of identity ~~theft~~ theft or mistaken identity.

9 (a) If any person is named in a charge for an infraction or a crime, either a
10 misdemeanor or a felony, as a result of another person using the identifying information of the
11 named person or mistaken identity and ~~the charge against the named person is dismissed,~~ a
12 finding of not guilty is entered, or the conviction is set aside, the named person may apply by
13 petition or written motion to the court where the charge was last pending on a form approved
14 by the Administrative Office of the Courts supplied by the clerk of court for an order to
15 expunge from all official records any entries relating to the person's apprehension, charge, or
16 trial. The court, after notice to the district attorney, shall hold a hearing on the motion or
17 petition and, upon finding that the person's identity was used without permission and the
18 charges were dismissed or the person was found not guilty, the court shall order the expunction.

19 (a1) If any person is named in a charge for an infraction or a crime, either a
20 misdemeanor or a felony, as a result of another person using the identifying information of the
21 named person or mistaken identity, and the charge against the named person is dismissed, the
22 prosecutor or other judicial officer who ordered the dismissal shall provide notice to the court
23 of the dismissal, and the court shall order the expunction of all official records containing any
24 entries relating to the person's apprehension, charge, or trial.

25 (b) No person as to whom such an order has been entered under this section shall be
26 held thereafter under any provision of any law to be guilty of perjury, or to be guilty of
27 otherwise giving a false statement or response to any inquiry made for any purpose, by reason
28 of the person's failure to recite or acknowledge any expunged entries concerning apprehension,
29 charge, or trial.

30 (c) The court shall also order that the said entries shall be expunged from the records of
31 the court and direct all law enforcement agencies, the Division of Adult Correction of the
32 Department of Public Safety, the Division of Motor Vehicles, or any other State or local
33 government agencies identified by the ~~petitioner~~ petitioner, or the person eligible for automatic
34 expungement under subsection (a1) of this section, as bearing record of the same to expunge
35 their records of the entries. The clerk shall notify State and local agencies of the court's order as



1 provided in G.S. 15A-150. The costs of expunging the records, as required under
2 G.S. 15A-150, shall not be taxed against the petitioner.

3 (d) The Division of Motor Vehicles shall expunge from its records entries made as a
4 result of the charge or conviction ordered expunged under this section. The Division of Motor
5 Vehicles shall also reverse any administrative actions taken against a person whose record is
6 expunged under this section as a result of the charges or convictions expunged, including the
7 assessment of drivers license points and drivers license suspension or revocation.
8 Notwithstanding any other provision of this Chapter, the Division of Motor Vehicles shall
9 provide to the person whose motor vehicle record is expunged under this section a certified
10 corrected driver history at no cost and shall reinstate at no cost any drivers license suspended or
11 revoked as a result of a charge or conviction expunged under this section.

12 (e) The Division of Adult Correction of the Department of Public Safety and any other
13 applicable State or local government agency shall expunge its records as provided in
14 G.S. 15A-150. The agency shall also reverse any administrative actions taken against a person
15 whose record is expunged under this section as a result of the charges or convictions expunged.
16 Notwithstanding any other provision of law, the normal fee for any reinstatement of a license or
17 privilege resulting under this section shall be waived.

18 (f) Any insurance company that charged any additional premium based on insurance
19 points assessed against a policyholder as a result of a charge or conviction that was expunged
20 under this section shall refund those additional premiums to the policyholder upon notification
21 of the expungement.

22 (g) For purposes of this section, the term "mistaken identity" means the erroneous arrest
23 of a person for a crime as a result of misidentification by a witness or law enforcement,
24 confusion on the part of a witness or law enforcement as to the identity of the person who
25 committed the crime, misinformation provided to law enforcement as to the identity of the
26 person who committed the crime, or some other mistake on the part of a witness or law
27 enforcement as to the identity of the person who committed the crime."

28 **SECTION 2.** This act becomes effective December 1, 2015, and applies to charges
29 filed on or after that date.